

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUANA FLORES,

Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*

Defendants.

Case No. 1:23-cv-01742-NODJ-CDB

ORDER TO SHOW CAUSE WHY THIS
ACTION SHOULD NOT BE DISMISSED
FOR IMPROPER VENUE

(Doc. 1)

TWENTY-ONE-DAY DEADLINE

BACKGROUND

On December 20, 2023, Plaintiff Juana Flores (“Plaintiff”) filed a complaint under the Federal Torts Claim Act for personal injuries against Defendants the United States of America, the United States Postal Service, Jonathan Daniel Douglas Elysee, and unnamed Doe Defendants (hereinafter collectively “Defendants”). (Doc. 1). Upon its initial review of the complaint, the Court preliminarily questions whether the action was commenced in an appropriate venue.

In her complaint, Plaintiff pleads, “[v]enue is proper in the *Central District of California* because the negligent acts giving rise to the Federal Tort Claim alleged herein occurred within the *Central District of California*. All the Plaintiffs, Defendant [Jonathan Daniel Douglas Elysee], medical providers, and witnesses reside within the *Central District*.” *Id.* at ¶ 4 (emphasis added). But in the following paragraph, Plaintiff alleges, “[v]enue is proper

specifically in the Eastern Division of this District because the negligent acts giving rise to the Federal Tort Claim alleged herein occurred within the Division of the Eastern District of California & all the Plaintiffs, Defendant [Jonathan Daniel Douglas Elysee], medical providers, and witnesses reside within the Division of the Eastern District of California. *Id.* at ¶ 5. The Court is unclear how both allegations can be true. Where do the parties and witnesses reside? Where did the relevant events take place?

The Court's confusion about where the suit properly is prosecuted is magnified based on other inconsistent factual allegations within the complaint. First, Plaintiff pleads that her claims arise from an automobile collision that occurred in Kern County on July 14, 2023. *Id.* at ¶ 6. Next, Plaintiff pleads that Defendant Elysee and Doe Defendants were operating a vehicle in Los Angeles County that caused a collision with Plaintiff on July 14, 2023. *Id.* at ¶¶ 20-21. Again, the Court can only speculate how both allegations could be true.

The above-identified defects could be remedied by amendment. *See* Fed. R. Civ. P. 15(a)(2) (“[t]he court should freely give leave [to amend] when justice so requires.”); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

CONCLUSION AND ORDER

Accordingly, Plaintiff is ORDERED TO SHOW CAUSE in writing, no later than January 17, 2024, why this action should not be transferred to a court in a suitable venue.¹

In the alternative, Plaintiff is GRANTED LEAVE TO FILE a first amended complaint (“FAC”) to remedy the deficiencies noted above. Plaintiff may comply with this Order by filing a FAC no later than January 17, 2024. Any such FAC supersedes the original complaint, and once filed, the original complaint no longer serves any function in the case. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading.

In the alternative, Plaintiff may file a notice of voluntary dismissal without prejudice (*see* Fed. R. Civ. P. 41(a)(1)(A)(i)) to permit the re-filing of her action in another District where she believes venue is proper. Plaintiff may comply with this Order by filing a notice of voluntary

¹ The filing of a First Amended Complaint will not affect Plaintiff's ability to later file an amended complaint as a matter of course pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. *See Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1007 (9th Cir. 2015).

1 dismissal without prejudice no later than January 17, 2024.

2 IT IS SO ORDERED.

3 Dated: **December 27, 2023**

4 
UNITED STATES MAGISTRATE JUDGE